IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.1 OF 2007

IN

ARBITRATION PETITION NO.543 OF 2004

Yogendra N. Thakkar and anr. ...Petitioners

v/s

Jayesh M. Gandhi and ors. ...Respondents

Mr N.C. Parikh with Ms Monisha Poladia i/b M/s Mansukhlal Hiralal and Co. for Petitioners.

Mr D.D. Madon with Ms Alpana Ghone i/b M/s Kanga and Co. for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 24TH APRIL 2007.

P.C. :-

1. By this petition, the petitioners allege that the respondent Nos.1 and 2 have wilfully disobeyed the consent order passed by this Court. The relevant part of the consent order is contained in clause 9 of the order which reads as under :-

> "9. The parties hereto agree and confirm that each partner will be entitled to purchase office equipment for his use or for the use of the employees of the said Firm subject to the maximum limit of Rs.1,50,000/- per annum for each partner and in case a partner proposes to purchase any office equipment which would by itself on jointly with other purchasers made by him exceeds the limit of Rs.1,50,000/- such proposal will have to be approved by all the continuing partners of the said Firm."

. The petitioners were entitled to the amount of Rs.1,50,000/- for purchase of office equipments. The petitioners decided to purchase five internet cards from Reliance Communication Infrastructure Ltd. for use of employees of the office. They prepared a voucher dated 12th October 2006 which was for the amount of

Rs.10,945/-. They also drew up a cheque of that amount and signed it. The cheque was submitted to the respondent No.1 for his signature because as per the consent terms, one of the persons from the group of respondent Nos.1 to 4 had to sign it. The respondent No.1 made endorsement on the voucher which reads as under :-

> "Why are they not using office facility or client office facility?"

. According to the petitioners, they explained that the cards are required to be purchased because the employees are carrying out audit of the clients. According to the petitioners, the respondent No.2 also did not sign the cheque. According to the petitioners, conduct of the respondent Nos.1 and 2 in not signing the cheque is willful disobedience of the order passed by this Court. Affidavit in reply has been filed on behalf of respondent Nos.1 to 4. According to the learned counsel appearing for respondents, the respondent Nos.1 and 2 did not sign the cheque because the internet cards which the petitioners were purchasing cannot be termed as office facility and therefore, the cheque was not signed. It is also the case of the respondents that there was no intention to wilfully disobey the order passed by this Court because subsequent cheques issued

by the petitioners have been signed and cleared. I have heard learned counsel for both the sides. Perusal of clause (9) of the consent terms, which is quoted above, shows that the petitioners were entitled to purchase office facility to the maximum limit of Rs.1,50,000/-. It is nobody's case that the purchase made by the petitioners exceeded the maximum limit. The defence in the affidavit in reply is that the respondent Nos.1 and 2 did not sign the cheque because according to them, it was not for purchase of office equipment. Perusal of the endorsement made by the respondent No.1 on voucher which is quoted above shows that at that time, it was not the objection raised that the internet card is not an office facility. The endorsement shows that he was doubting prudence of purchasing the internet card when the internet facility was available in the office of the firm as also in the offices of the clients. The endorsement does not say that the internet card is not office equipment as said in clause (9). Perusal of paragraphs 20 and 29 of the reply through which I was taken by the learned counsel appearing for respondents also shows that there also the respondents are not saying that they refused to sign the voucher because the internet card is not office equipment. Their defence is that the petitioners were extending additional facility to the employees which according to them was not necessary. Now, additional facility to be provided to

the employees can also be merely office equipment. In any case, neither in the affidavit in reply nor in the endorsement on the voucher, it is the case of the respondent Nos.1 and 2 that they have refused to sign because the petitioners were purchasing internet cards which was not office equipment. Thus, the defence raised by the respondents, in my opinion, is clearly an afterthought. The intention of the respondent Nos.1 and 2 in not signing the cheque was clearly to disobey the order made by the Court and harass the petitioners. It appears from the averments in the petition that previously also the respondent Nos.1 and 2 have refused to sign the cheque and therefore, contempt petition was required to be filed. In my opinion, the facts disclosed on record clearly show that the respondent Nos.1 and 2 have wilfully disobeyed consent order made by this Court. So far as the aspect of the punishment is concerned, the respondent Nos.1 and 2 have tendered unconditional apology. It is also stated by them that the cheques subsequently issued by the petitioners are all signed by them. The learned counsel appearing for petitioners also accepted this. In my opinion, therefore, imposing fine on respondent Nos.1 and 2 will meet the ends of justice.

2. The respondent Nos.1 and 2 are thus held guilty of committing civil contempt. They are directed

to pay fine of Rs.1,000/- each. They are also directed to pay cost of this petition to the petitioners which is quantified at Rs.10,000/-.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.